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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,612	09/04/2001	Ronald J. Boser		1322
7590	05/18/2005		EXAMINER	
MYRON AMER, P.C. Suite 310 114 Old Country Road Mineola, NY 11501			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	
			DATE MAILED: 05/18/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/944,612	BOSER, RONALD J.
	<b>Examiner</b>	<b>Art Unit</b>
	Gloria Hale	3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 4-27-04 Examiner's Answer Reply.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

In view of the Reply to the Examiner's Answer filed on 4-27-04, PROSECUTION IS HEREBY REOPENED. A rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

***Claim Rejections - 35 USC § 112***

Claim 1 contains the trademark/trade name VELCRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a hook and loop fastener component and, accordingly, the identification/description is indefinite. The

tradename VELCRO must be removed from the claim. Only the generic terminology should be used in the claim.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fairbanks et al (US 2,613,365) in view of the Gershman article "Self-Adhering Nylon Tapes" and Shimizu (JP 08158111).

Fairbanks discloses a brassiere (10) which includes a first construction wherein the bra (10) is worn with a sheath (25) and underwire (30) or a second construction without the sheath (25) and underwire (30). Additionally, the bra can be worn with the sheath attached thereto and with the underwire (30) removed from the sheath (25) which can be considered to be a "third" construction. The bra of Fairbanks et al includes a bra (10) with breast cup pockets (12,13) with a tape (20) as seen in figure 4, sewn under each breast along each cup edge and therefore permanently adhered to a part of the bra. The tape (20) further includes female snap fasteners (21) therein which forms the first construction of the bra (10) which is worn without the sheath (25) and underwire (30). Fairbanks et al also discloses the bra (10) to be worn in the second construction including a sheath (25) with an underwire (20) therein which is U-shaped for each cup as seen in figures 1, 2 and 5. The sheath 25 is formed of two strips of

material (27, 28) one of which (28) is a plush material that faces the inside of the garment to provide a cushioning effect to the female wearer's skin. The sheath (25) also includes male snap fastener components (26) which correspond to the female fastener components (21) for fastening the sheath (25) with the underwire (30) therein to the bra tape (20) along it's entire length. (See Fairbanks et al., col. 3, lines 21-70). However, Fairbanks et al does not specifically disclose the use of VELCRO hook-type and VELCRO loop-type fastener components to attach an underwire/sheath to the bra. The Gershman article discloses the common knowledge that it is well known to substitute different types of fasteners such as snaps with male and female snap components, buttons and buttonholes and hooks and eyes etc. with VELCRO hook and loop fasteners for greater ease in fastening and unfastening and to achieve other known benefits of the VEOCRO hook and loop material such as its fabric conformity to the contours of the wearer when in use in garment construction, comfort to the wearer and its aesthetic values. This use of hook and loop tapes is also seen in Shimizu which discloses the use of a hook tape 2b n an underiwre (4) and bra cup (2) and a loop tape (1b) on the surface facing the wearer on the cup frame of the bra in order to attach the underwire and cup to the frame of the bra as applicant's. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bra of Fairbanks et al to substitute the male (26) and female (21) snap fastener components with male (hook) and female (loop) fastener components of VELCRO or any other hook and loop brand material wherein a male snap component is substituted with a male hook material and a female snap component is substituted with

a female (loop) material since such substitution is well known in garment manufacturing as disclosed by Gershman in order to provide greater ease in fastening and unfastening a garment; comfort to the wearer since VELCRO material hook and loop components bend to the contours of the wearer and also for aesthetic values in garment construction. Such a substitution is obvious with the common knowledge of fastener substitution as described by Gershman. By using the loop material which is a female component in place of a female snap fastener component (21), the loop material will face the skin of the wearer and its plush material surface is similar to the "plush" material in Fairbanks used to construct the tape (28) which faces the wearer as discussed above and in col. 3, lines 49-53 of Fairbanks et al and as claimed in lines 13-15 of claim 1 of the present application. The bra of Fairbanks et al is wearable with the tape (20) which is sewn to otherwise permanently attached to the bra body (11) which would be the first construction. Lines 3-8 of col. 1 of Fairbanks et al states that the wire frames (30) and sheath (25) can be removed for "cleaning and other purposes" wherein many wearer's of brassiere would consider "other purposes" to include "comfort" and to remove "ill-fitting underwire" such as indicated in lines 9-20 of col. 1. Therefore, if the underwire is not comfortable to the wearer the sheath (25) with the underwire (30) therein can be un-snapped from the bra and the bra can remain on the wearer. Additionally, the bra can be laundered in a machine and the sheath and underwire can be washed by hand more delicately to avoid damage to the bra, the underwire and the sheath. The removal of the sheath (25) with the underwire by unsnapping is easier than removing the wire (30) from the sheath (25).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Shimizu (JP 08158111- with English translation).

Shimizu discloses a first and second construction for right and left breast cup supports for a brassiere attached in supporting relation respectively in surrounding relation about a bottom of a cooperating breast cup (1a) using a hook type (2b) and loop-type 1b fasteners with the first and second construction comprising for each breast cup 1a a U-shape (4) in cup 2 of shape imparting construction material (the underwire) serving as each cup support, a fabric casing (the cup fabric about the underwire as seen in figure 4- English translation) in covering relation about the U-shape, the hook-type fastener strip attached to the fabric casing (2b) and a loop-type fastener strip (1b) attaché din an outwardly facing relation in an operative location in surrounding relation about a bottom of a cooperating breast cup (as seen in figure 2) and in an interposed position between the brassiere and the upper torso of the wearer. The strips of hook type 2b and the loop type 1b fasteners having operative position in face-to-face contact with each other incident to providing breast cup support to the wearer of the bra and in the second construction removal of the cup support (2 with the wire 4) which exposes the loop type attached strip (1b) which is nominally felt by the wearer. The removal of

the cup with the underwire 4 allows for a selective support to be worn by the wearer. (See Figures 2, 4, 6 and 8 of the English translation of Shimizu and page 5, paragraph 11 – page 6, paragraph 13; page 10, paragraph 22 and page 12, paragraph 28).

### ***Response to Arguments***

Applicant's arguments filed on page 5 of the 1-8-02 response have been fully considered but they are not persuasive.

In the above response applicant states that the bra is not worn when it is laundered and that this is indicated in Fairbanks et al col. 2, lines 43 – 45. However, it does not appear that Fairbanks et al indicates that the bra is not worn when the underwire is removed. The bra may still be worn when the underwire is removed for laundering. It just indicates that the bra can be "safely laundered" when the underwire is removed. The first lines of the Fairbanks patent, col. 1, lines 3-8, clearly state that the "user" decides how to wear the bra and detach the underwire for "other purposes". "Other purposes" being limited only by the imagination of the wearer. When substituting the male and female fasteners of Fairbanks et al with comparable male and female fastener components of a hook and loop fastener the loop fastener would take the place of a female snap fastener and therefore the female or loop material is a plush material which would provide comfort to the wearer as indicated in col. 3, lines 51 – 54 wherein a plush material provides a cushioning effect to a wearer. The use of the hook and loop fastener components as a substitute for other male/female fasteners and even zipper tapes is widely well known in garment construction. In regard to page 5 of the "Appeal

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Brief Arguments" applicant is limiting "other purposes" to laundering type processes. However, the Examiner disagrees and considers "other purposes" to include any other purpose a wearer f a brassiere would choose not to wear an underwire and which comfort would be considered to be the number one reason to remove an underwire from a bra. Other obvious reasons for wearing or not wearing is "fashion" and the setting in which the brassiere is to be worn. In regard to the comments concerning col. 2, lines 1-10, the examiner considers the removal of the underwire (30) from the sheath (25) as being a third configuration option of wearing the bra. The first being without the sheath and underwire; the second being with the sheath without the underwire and wherein the placement or removal of any of the components (25) and (30) is at the selection of the wearer for any known reason for "other purposes" as discussed above. Many wearers would consider comfort as being the most important reason or purpose to remove an underwire from a bra. The remaining sheath would provide support to the wearer with the extra fabric thickness and the conformation f the U-shape under the breast. In response to page 5 of applicant's "First" remarks, Fairbanks et al discloses the use of snaps which were the most logical fastener choice during the time of the Fairbanks et al invention since hook and loop fasteners were not available in 1949 and were not widely used at the time and the time of filing of the Fairbanks et al invention. Since the late 1950's, the substitution and use of hook and loop fasteners has been widely known. When substituting a hook and loop fastener component for r a snap fastener component a short piece of hook and loop material, the same size of each snap fastener component, may be utilized in place of each snap component. Applicant's claim does

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not state that the VELCRO hook and loop components are in a "Continuous strip configuration" or without breaks in the hook and loop material component strips. Aligning the hook and loop piece components is no more difficult than aligning extended strips especially since the curvature of the underwire must be properly aligned to the curvature of the breast cup portion. The pieces being a guide to the proper connection and providing a more accurate alignment than an elongated hook and loop fastener component construction. The "VELCRO" loop is the female component of a fastener and take the place of the non-protruding or "recessed" component of a snap fastener. The male component is the protruding portion which snaps into the female portion recess.

Therefore, one of ordinary skill in the art at the time the invention was made would substitute a loop fastener of a hook and loop fastener for a female snap fastener component and a hook for a male protruding snap fastener.

In conclusion , it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the snap fasteners of the Fairbanks et al bra with corresponding hook and loop fastener components as discussed above for greater ease in fastening and unfastening the underwire sheath to the bra, as desired by the wearer, to thereby provide greater comfort to the wearer as desired.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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